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266 NLRB No. 123

D--9803
Billings, MT

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RAWLEY C. KOCH, d/b/a
SPEAR MEAT COMPANY

and

Case 19--CA--15249

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 33,
CHARTERED BY UNITED FOOD AND
COMMERCIAL WORKERS INTERNATIONAL
UNION, AFL--CIO, CLC

DECISION AND ORDER

Upon a charge filed on December 13, 1982, by United Food and Commercial Workers Union Local 33, chartered by United Food and Commercial Workers International Union, AFL--CIO, CLC, herein called the Union, and duly served on Rawley C. Koch, d/b/a Spear Meat Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 19, issued a complaint and notice of hearing on December 28, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

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Respondent failed to file an answer to the complaint or request an extension of time for filing an answer.

On January 31, 1983, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on February 7, 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and thus the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. [Emphasis supplied.]

The complaint and notice of hearing specifically states that, unless an answer to the complaint is filed by Respondent

within 10 days of service thereof, ''all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.'' According to the uncontroverted allegations of the Motion for Summary Judgment also served on Respondent, the Regional Director, on December 28, 1982, mailed the complaint and notice of hearing to Respondent by registered mail. Further, counsel for the General Counsel, by letter dated January 18, 1983, return receipt requested, advised Respondent that no answer to the complaint had been received and that summary judgment would be sought unless an answer was received before January 25, 1983. Respondent did not file an answer or make any other reply to this letter.

Good cause for failure to answer the complaint has not been shown. Under the rule set forth above, the allegations in the complaint are deemed admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Rawley C. Koch, d/b/a Spear Meat Company, a sole proprietorship, with its principal place of business in Billings, Montana, was at all material times herein engaged in the retail sale of meat and grocery products. Respondent, in the course and conduct of its business operations during the 12 months preceding issuance of the complaint, had gross sales of goods and services valued in excess of \$500,000. During the same 12-month period,

Respondent also purchased and caused to be transferred and delivered to its facilities within the State of Montana goods and materials valued in excess of \$50,000 directly from sources outside the State, or from suppliers within the State who in turn obtained such goods and materials directly from sources outside the State of Montana.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

United Food and Commercial Workers Union Local 33, chartered by United Food and Commercial Workers International Union, AFL--CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

Since on or about September 10, 1979, and at all times material herein, the Union has been the designated exclusive bargaining representative of Respondent's employees in the following unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All employees engaged in handling, cutting, selling, processing, wrapping, and preparing of fish, and fish products, poultry, and poultry products and all meat products that are offered for sale in Respondent's meat department and meat cases; excluding guards and supervisors as defined in the Act.

Respondent's recognition of the Union as the representative of such employees has been embodied in a collective-bargaining

agreement effective by its terms for the period March 16, 1979, through June 19, 1982. Thus, at all times material herein, the Union has represented a majority of Respondent's employees in the unit, and has been, and is now, the exclusive collective-bargaining representative of all such employees within the meaning of Section 9(a) of the Act.

On or about March 30, July 26, September 21, and November 22, 1982, the Union requested Respondent, through Rawley C. Koch,¹ to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the unit described supra. Commencing on or about March 30, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent, since March 30, 1982, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

¹ At all times material herein, Rawley C. Koch has been the owner of Respondent and is now, and has been at all times material herein, a supervisor of Respondent within the meaning of Sec. 2(11) of the Act and an agent of Respondent within the meaning of Sec. 2(13) of the Act.

IV. The Effects of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

Conclusions of Law

1. Rawley C. Koch, d/b/a Spear Meat Company, is an employer engaging in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Food and Commercial Workers Union Local 33, chartered by United Food and Commercial Workers International Union, AFL--CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees engaged in handling, cutting, selling, processing, wrapping, and preparing of fish, and fish products, poultry, and poultry products and all meat products that are offered for sale in Respondent's meat department and meat cases;

excluding guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 30, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders

that the Respondent, Rawley C. Koch, d/b/a Spear Meat Company, Billings, Montana, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Food and Commercial Workers Union Local 33, chartered by United Food and Commercial Workers International Union, AFL--CIO, CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees engaged in the handling, cutting, selling, processing, wrapping, and preparing of fish, and fish products, poultry, and poultry products and all meat products that are offered for sale in Respondent's meat department and meat cases; excluding guards and supervisors as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facility in Billings, Montana, copies of the attached notice marked "'Appendix.'"² Copies of said notice, on

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in (continued)

forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

April 29, 1983

Donald L. Dotson, Chairman

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

2 the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

I WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Food and Commercial Workers Union Local 33, chartered by United Food and Commercial Workers International Union, AFL--CIO, CLC, as the exclusive representative of the employees in the bargaining unit described below.

I WILL NOT in any like or related manner interfere with, restrain, or coerce my employees in the exercise of the rights guaranteed them by Section 7 of the Act.

I WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees engaged in the handling, cutting, selling, processing, wrapping, and preparing of fish, and fish products, poultry, and poultry products and all meat products that are offered for sale in the Employer's meat department and meat cases; excluding guards and supervisors as defined by the Act.

RAWLEY C. KOCH, d/b/a SPEAR MEAT COMPANY

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 2948, 915 Second Avenue, Seattle, Washington 98174, Telephone 206--442--7472.